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Status Report on Environmental Review Rule Amendment Process, October 2005

Over the past two years the EQB has been evaluating the State's Environmental Review program and considering amending the rules under which the program operates. A major part of the evaluation was directed at the mandatory category thresholds for Environmental Assessment Worksheets (EAWs). Background documents prepared during this study can be found at [EQB Study of Environmental Review](#).

In February 2005, as the first step toward formal rulemaking, the EQB published a [Request for Comments](#) notice seeking public comment on possible amendments to the Environmental Review rules. The Request for Comments incorporates a table describing 48 possible rule amendments titled [Proposed Revision of the Rules Governing the Environmental Review Process](#). Copies of the public comments received are also posted.

Since the Request for Comments period, the EQB staff has been briefing the Board about the possible rule amendments in light of the comments received. At its August 2005 meeting the Board endorsed a two-phase approach to amending the rules. In the first phase, almost all the housekeeping and technical amendments will be pursued, along with mandatory threshold revisions for the following mandatory EAW categories: air pollution (subpart 15); wastewater systems (subpart 18); animal feedlots (subpart 29); & historical places (subpart 31).

The second phase of rulemaking will cover amendments not ready for the first phase. This will include establishment of new mandatory categories (and possibly exemptions) for lakeshore developments and development near highly important natural resources; possible amendments to the nonmetallic mineral mining category; and amendments to several rule provisions related to the concept of cumulative impacts. Also, amendments scheduled for the first phase which get delayed may be shifted to the second phase.

The expected schedule for phase one of the rulemaking is as follows. The Board will discuss the proposed amendments and draft Statement of Need and Reasonableness, and accept public testimony during at least two Board meetings: the regular Thursday, October 20 meeting and a special meeting scheduled for Friday, December 9. The Board may also accept testimony at a meeting on Thursday, November 17, if a meeting is held on that date. *Please note that the proposed amendments to the animal feedlot mandatory EAW threshold will NOT be discussed at the October 20 meeting; those amendments and the associated SONAR material will not be ready for the October meeting.* In the event that the Board authorizes formal rulemaking at the December 9 meeting, it is anticipated that rulemaking hearings before an Administrative Law Judge would be held in February 2006.



Persons interested in these rulemaking activities are advised to check the Board meeting agenda section of the web site for exact information about the agendas of the upcoming meetings. The information given in this status report about upcoming meetings and agendas is tentative and may be changed.

The table below indicates the rulemaking phase associated with each of the proposed amendments under consideration, as listed in the [Proposed Revision of the Rules Governing the Environmental Review Process](#) table from the Request for Comments. Note that two of the original items (#23 & 27) have been dropped entirely, while two additional items have been added that were left off the original table. The additional items are both housekeeping changes: #49 involves amending the EIS threshold for ethanol plants to make it consistent with a change made by the 2004 Legislature; and #50 involves deleting the obsolete definition of “State Planning Agency.”

Item #*	Phase		Item #*	Phase
1	I		26	I
2	II		27	Dropped
3	I		28	
4	I		29	II
5	I			
6	I		30	I
7	I		31	I
8	I		32	I
9	I & II**		33	I
			34	I
10	I		35	II
11	I		36	II
12	I		37	I
13	I		38	II
14	II		39	I
15	I			
16	I		40	I
17	I		41	I
18	I		42	I
19	I		43	I
			44	I
20	I		45	I
21	I		46	I
22	I		47	I
23	Dropped		48	I
24	I		49 (new)	I
25	II		50 (new)	I

*The “item #” refers to the number given the amendment in the table that accompanies the Request for Comments.

** Item 9 involves 2 parts, one of which will be covered in phase I, the other in phase II